

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6105**

**BILL NUMBER:** SB 40

**NOTE PREPARED:** Oct 7, 2010

**BILL AMENDED:**

**SUBJECT:** Bail.

**FIRST AUTHOR:** Sen. Rogers

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**    **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A.    *Bail Expiration* – It provides that an undertaking for bail expires 36 months after the undertaking is posted for the release of a defendant from custody if: (1) the defendant fails to appear as required; and (2) the court fails to make an adjudication concerning the defendant, including refusing to extradite the defendant; during the 36-month period.
- B.    *E-Mail Addresses* – It requires sureties and bail agents to establish and maintain electronic mail addresses before June 1, 2011. It provides that if a defendant does not appear as provided in a bond and the court orders the bail agent and the surety to surrender the defendant to the court, the clerk may send notice of the order by electronic mail to the bail agent and surety.
- C.    *Deadline for Producing Defendant* – It reduces the amount of time that a surety and bail agent have to produce a defendant or provide a valid reason for the defendant's failure to appear from 365 days to 180 days.
- D.    *Release from Liability* – It provides that a court must release the bail agent and surety from liability from a bond if a defendant is arrested before the court enters judgment on the forfeiture of the bond and the court has actual knowledge that the defendant was or is in the custody of the United States pending deportation from the United States.
- E.    *Late Surrender Fees* – It changes the period used to assess late surrender fees against a surety and bail agent. It specifies the late surrender fee is equal to 80% of the face value of the bond. It provides that costs resulting from a defendant's failure to appear may not be assessed against a bail agent or surety. It provides that the court in which a bond is posted retains late surrender fees instead of the fees being deposited in police pension trust funds and county extradition funds. It specifies that the retained fees must be used by a court to defray the costs of operating the court, extraditing criminal defendants, and operating diversion programs. It repeals the law establishing county extradition

funds on July 1, 2013.

**Effective Date:** Upon passage; July 1, 2013.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** *Deadline for Producing Defendant* – This provision could increase forfeiture revenue to the Common School Fund.

Under current law, a bail agent forfeits 20% of the face value of the bond if the agent cannot make the defendant appear within 180 days after notice is sent from the court to the agent. As proposed, a bail agent would forfeit 80% of the face value of the bond if the defendant does not appear within 180 days. All forfeitures are deposited in the Common School Fund. The number of bond forfeitures is not reported.

**Explanation of Local Expenditures:** *E-mail Addresses* – Requiring surety and bail agents to establish and maintain e-mail addresses with the clerk of the court should reduce the costs of notification for the clerk. The county general fund would save money from both stationery and postage if notices could be sent by e-mail. As of October, 2010, the cost of a first-class stamp was 44 cents.

**Explanation of Local Revenues:** Persons who are charged with a crime and await trial have a constitutional right to be released if they will not be a threat to public safety. Bail bond agents assume the risk of ensuring that the defendant appears for trial for a fee charged to the defendant. Indiana law includes conditions for bail bond agents to produce a defendant for court appearances when the court notifies the agent.

*Late Surrender Fee* – Under current law, the amount of the Late Surrender Fee depends on how many days it takes for the bail bond agent to produce the defendant after the agent receives notice from the court for the defendant to appear. The agent must produce the defendant within 120 days to avoid paying this fee. As proposed, bail bond agents would be required to produce a defendant within 180 days to avoid paying a fee of 80% of the face value of the bond. If most bail agents **do not** produce defendants within 180 days of the notice to appear, revenue from Late Surrender Fees could increase by reducing the amount of time that a bail agent has to produce a criminal defendant for trial.

Changes in Late Surrender Fees			
Number of Days Before Bail Bond Agent Is Able to Produce Defendant After Notice by the Court			
Current Law	Late Surrender Fee as Percentage of Face Value of Bond	Proposed	Late Surrender Fee as Percentage of Face Value of Bond
Between 120 and 180 days	20%	Over 180 days	80%
Between 181 and 210 days	30%		
Between 211 and 240 days	50%		
Between 241 and 365 days	80%		

Revenue from the Late Surrender Fee is currently deposited into the police pension trust fund and the county extradition fund. As proposed, the revenue would be redirected to the court that issued the bond to defray the costs of operating the court, including the costs of extraditing criminal defendants and operating diversion programs. Funds remaining in a county extradition fund on July 1, 2013, are transferred to the county's general fund.

According to the *Indiana Judicial Report*, in CY 2009, 20 counties reported collecting \$560,000 from the Late Surrender Fee.

The Department of Insurance reports that 343 bail bond agents were registered in 2009.

**State Agencies Affected:** Department of Insurance.

**Local Agencies Affected:** Courts with criminal jurisdiction; Clerk of the circuit court.

**Information Sources:** Division of State Court Administration; Department of Insurance website.

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